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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 287th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 May 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.287/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Denmark (CAT/C/34/Add.3; HRI/CORE/1/Add.58)

1. At the invitation of the Chairman, Mr. Bruun, Mr. Færkel, Mr. Frederiksen, Mr. Kjølbro, Ms. Apostoli, Ms. Troldborg, Ms. Cohn and Ms. Skouenborg (Denmark) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Denmark and invited it to introduce the third periodic report of Denmark.

3. Mr. BRUUN (Denmark) said that he wished to emphasize the importance Denmark attached to the consideration of periodic reports, which provided it with an opportunity to engage in a constructive dialogue with the Committee. The submission and consideration of reports by all States parties was a key element in preventing torture.

4. The first document submitted by Denmark was the periodic report itself (CAT/C/34/Add.3), which was an update of the previous reports and which referred at length to the core document (HRI/CORE/1/Add.58). Denmark had also sent the Committee the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning its visit to Denmark in September/October 1996. Although it was confidential, the report had been made public at the request of the Government of Denmark on 24 April 1997. A number of other documents had also been sent to the secretariat, as it was impossible to provide exhaustive replies in the report to all the questions put by the Committee. The documents included a lengthy correspondence with the European Committee for the Prevention of Torture concerning, in particular, the situation in prisons, and a circular dated January 1997, referring to and summarizing that correspondence.

5. Ms. ILIOPOULOS-STRANGAS (Country Rapporteur) thanked the Danish delegation for the very useful documentation sent to the Committee. She said that she would restrict her remarks, which were suggestions rather than criticisms, to the periodic report (CAT/C/34/Add.3), which raised a number of interesting points. Where human rights were concerned, there was always room for improvement.

6. It was clear from paragraphs 2-4 of the report that the Convention had still not been incorporated into Danish law. However, with the evolution of international relations, it was increasingly difficult, particularly where human rights were concerned, not to give legal status to an international instrument. Paragraphs 103 and 104 of the core document (HRI/CORE/1/Add.58) explained the dualist system practised by Denmark, and the reasons why the European Convention on Human Rights had been incorporated into domestic law. She pointed out that the argument that the measure had a psychological effect, by familiarizing members of the legal profession with the instrument and providing judges with an extra tool, was equally valid for the United Nations Convention and for all the international human rights instruments. Moreover, the issue of whether an international instrument which had not been

incorporated into domestic law could be invoked in the courts was still the subject of debate in Denmark. Consequently, in the interests of legal certainty, it would be preferable, in the light of the observations made in paragraph 3 of the report, to incorporate instruments such as the Convention into Danish domestic law. On a different topic, she said that the comprehensive reform of the judicial system in Greenland, described in paragraphs 5-10 of the report, was exemplary and should provide inspiration for all those countries in an analogous situation.

7. The definition of torture set forth in the Convention had not been adopted by Danish law. The issue was not whether the Criminal Code contained the necessary elements for a sufficiently severe sentence to be handed down against torturers, and the provisions for other offences - violence, endangering a person's physical security, etc. - could not make up for the absence of a specific offence of torture. Even if one accepted the view of the Standing Committee on the Criminal Code that article 244 of the Code could be a basis for prosecuting mental torture and even if the Criminal Code was far broader in scope than the Convention, the interests of legal certainty and the international commitments made by Denmark required a definition of torture to be introduced into legislation.

8. Under the Danish Aliens Act, residence permits were granted to aliens falling within the 1951 Convention relating to the Status of Refugees, a provision that might seem restrictive in terms of article 3 of the Convention against Torture. It was stated that in practice residence permits were also granted if there was a risk of torture, even if the persecution could not be deemed to be covered by the 1951 Convention. However, as the protection afforded by article 3 of the Convention was absolute, it would be preferable for the practice, referred to in paragraph 15 of the report under consideration, to be set forth in a legal instrument.

9. Paragraph 17 of the report stated that in cases where there was reason to suspect that asylum applicants might have been subjected to torture, they were given a more detailed medical examination; it was commendable that it should be possible for such persons to be examined by the forensic institutes, but it should be emphasized that article 3 of the Convention did not require such medical examinations. For article 3 to apply, it was not necessary for a person under threat of expulsion to have been tortured; there had to be substantial grounds for believing that if he were expelled or returned he would be in danger of being subjected to torture. The fact that a person had already been tortured was certainly an indication, but nothing more. Section 31 (2) of the Aliens Act, quoted in paragraph 23 of the report, at first sight seemed restrictive in comparison with article 3 of the Convention, as it included an exemption from the prohibition against expulsion if the alien presented an immediate danger to other persons. However, paragraph 28 stated that "the prohibition against refoulement also applies to aliens expelled by judgement". She asked whether the term "judgement" referred to a criminal conviction. The protection provided by article 3 of the Convention was absolute, and even if an alien was a threat to national security, if there were serious grounds to believe that he might be tortured, the State party should find a solution to protect him and there should be no exception to the prohibition on expulsion or return. Moreover, paragraph 27 stated that in the light of new relevant information or of events in the country of origin, the

immigration authorities "can" decide to re-examine the case and suspend the enforcement of the expulsion: in such circumstances, the authorities were required to re-examine the case in the light of article 3 of the Convention.

10. The efforts made by the Danish authorities to facilitate the admission of members of ethnic minorities to the Danish Police Academy and their access to employment in the police, described in paragraph 43 of the report, were admirable. Information on the ethnic minorities concerned would be useful.

11. A question arose concerning solitary confinement during pre-trial detention. According to paragraph 60 of the report under consideration, there was no absolute restriction in time for very serious offences, as the principle of proportionality was applied: she asked whether that principle had constitutional status under Danish law, whether it was contained in legislation and whether it was justiciable. In addition, paragraph 66 of the report stated that prison inmates could be sentenced to disciplinary punishment in the form of confinement in a special cell for up to four weeks. In view of the statement in paragraph 67 that inmates must be informed of the information available in the case and be given an opportunity to make a statement and that the decision must be made in the presence of the inmate, she asked whether there was any judicial control over that procedure. Similarly, regarding the physical restraint referred to in paragraphs 70-73 of the report, she would like to know whether the only legal basis for using a belt, foot straps and gloves as restraints was the April 1994 circular of the Ministry of Justice. She asked whether such measures were decided upon or supervised by a court and whether their duration was unlimited. According to paragraph 83 of the report, no appeal to the courts against those decisions was apparently possible, and one might wonder why the general appeal procedure was "of no practical importance in this field"; action by the ombudsman was no substitute for judicial control by independent judges.

12. Paragraph 86 of the report stated that the regional control boards (police complaints boards) were composed of a lawyer and two laymen. She asked whether they were civil servants and by whom they were appointed. Also regarding articles 12 and 13 of the Convention, she asked whether the figures provided in paragraph 87 of the report pointed to a decline or an increase in the number of complaints in comparison with previous years. Paragraph 92 referred to the widely criticized decision taken by the Ministry of Justice in December 1995 to drop the prosecution of three police officers involved in the events at Nørrebro. She asked whether the decision was in conformity with the separation of powers. The Minister had acted as the highest representative of the prosecution service and could certainly anticipate the outcome of the trial. She suggested that it might nevertheless have been preferable to allow independent judges to take a decision. She asked whether the results of the new investigation decided by parliament in May 1996 had been made public. In the same connection, information on the composition and competence of the police complaints board, referred to in paragraph 99 of the report, would be useful. In the Parnas case, which had been closed because of the state of the evidence, the Board had found the behaviour of the police officers concerned regrettable, but the District Public Prosecutor had shelved the case on the grounds that further prosecution could not be expected to lead to a conviction of the suspects, and his decision had been confirmed by the Director of Public Prosecutions. In that respect, information on the respective competence of

the Board, the District Prosecutor and the Director of Public Prosecutions would be valuable. Lastly, she would appreciate further information on the rules governing the use of dogs during demonstrations. She asked whether it was simply regulated by administrative decree or whether there was any relevant legislation. She also observed that the appropriateness of such measures might be queried in the light of the principle of proportionality.

13. Mr. REGMI (Alternate Country Rapporteur) said that the report under consideration (CAT/C/34/Add.3) was fully in conformity with the Committee's guidelines and that it provided valuable information on new developments relating to the application of the Convention since the previous periodic report had been considered. Regarding paragraphs 4 and 31-35 of the report, he too emphasized that the Convention should be incorporated into Danish domestic law. In a democratic system, criminal offences should be precisely defined and the penalties incurred specified in a single document. In conformity with articles 1, 2 and 4 of the Convention, torture should be defined and classified as a criminal offence by domestic legislation. That obligation, which was specified by the provisions of article 19, had clearly not been complied with by Denmark. He earnestly hoped that in conformity with the recommendations made by the Committee in the past, Denmark would consider incorporating the Convention into its domestic law as a matter of urgency. In addition, paragraph 36 of the report stated that, if the need arose, the question would be reconsidered: he said that that would be in conformity with the spirit and letter of the Convention.

14. He commended the Danish Government's continued efforts to defend human rights and prevent potential violations. He noted with satisfaction that a new basic training programme had been introduced for the police, together with "cultural sociology" including, for example, the relationship between the police and ethnic minorities. The research project undertaken in 1990 to determine a scientific basis for assessing any mentally harmful effects of remands in custody in solitary confinement was highly interesting.

15. The Rehabilitation and Research Centre for Torture Victims (RCT) and its International Rehabilitation Council for Torture Victims (IRCT) were quite remarkable institutions in the sphere of human rights and in particular that of assistance to torture victims. Their activity was well known throughout the world. The subsidies provided by the Government of Denmark to those private bodies made it possible for Denmark to comply with the commitments it had made under the Convention, and in particular articles 3, 10 and 14.

16. Regarding the application of article 11 of the Convention, it was noteworthy that approximately 15 paragraphs of the report concerned solitary confinement, either in punishment, observation or security cells, for a short or long period of detention. There was no doubt that prolonged solitary confinement was inhuman and degrading treatment that was contrary to both the spirit and letter of the Convention. In October 1996, the Human Rights Committee had considered the third periodic report of Denmark (CCPR/C/64/Add.11) and had recommended that the regulations relating to pre-trial detention and solitary confinement should be amended. In its recently published report on its visit to Denmark, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had reported that many detainees held in solitary confinement showed symptoms of

anxiety and depression. Action was therefore required. He asked whether an official who placed a detainee in solitary confinement without proper grounds would have to answer for it and to pay compensation. He asked whether detainees were entitled, while in solitary confinement, to receive visits from their family and to consult a lawyer or, if necessary, a doctor. He would appreciate information from the Danish delegation on that point. Regarding the practice of "fixed leg locks", paragraph 103 of the report stated that the Danish authorities had decided to abolish the practice in 1994. According to another source, the practice had been suspended until further notice, while Amnesty International's 1996 report stated that "fixed leg locks" had been used on seven detainees. In the light of that somewhat contradictory information, he suggested that the Danish delegation should clearly state whether the practice was still in use, suspended or whether it had been abolished.

17. He had also received information from Amnesty International concerning the imminent expulsion of Algerian and Chechen asylum seekers. The decision was being reviewed, but according to Danish practice, there was a strong risk of the persons concerned being sent back to their country, where they were unquestionably in danger of being tortured. Thus, the situation seemed to constitute a breach of article 3 of the Convention.

18. To conclude, he thanked and again commended the Danish authorities for the quality of their report and their determination to combat torture.

19. Mr. BURNS said that Denmark had attained a remarkable level of respect for human rights. He merely wished to draw the Danish delegation's attention to three points. The first of them was the issue, which had already been dealt with when the second periodic report had been considered, of the incorporation into the Danish Criminal Code of a definition of torture within the meaning of article 1 of the Convention. While it was possible to comprehend some of the reasons why the Government of Denmark had not yet incorporated such a definition, it was hard to accept that one of the countries most active in combating torture and in assisting torture victims, at the national and international levels, and which made the highest contributions to the United Nations Voluntary Fund for the Victims of Torture, should not possess a definition of torture in its own domestic law. There were two kinds of argument that might persuade the Government of Denmark to review its position. Firstly, there was a qualitative and moral difference between aggravated bodily attack and torture; the difference between a policeman deliberately striking a suspect during an interrogation to obtain information or for discriminatory reasons and a policeman losing his self-control and striking someone was readily apparent. The distinction was evident from article 1 of the Convention. Secondly, and in purely administrative and bureaucratic terms, he asked how the Government of Denmark could determine and prove that acts of torture were or were not committed in Denmark if it was unable to base itself on precise elements in the form of a definition. Even though one might readily admit that there had been no acts of torture since the second periodic report had been considered, as was confirmed moreover by the report on Denmark by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment published the previous month, it was impossible to prove it on the basis of

precise statistics. Paragraph 87 of the report referred to "offences" that a complainant believed had been committed by the police; a definition of torture would have allowed greater precision.

20. In the report referred to above, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had raised the problem of interrogation in police stations. It was important for police officers to inform suspects of their right to consult a lawyer. The fact that at that stage lawyers' fees were paid by the suspect if he was subsequently convicted also posed a problem. It would also be interesting to know the actual importance attached to the conclusions of the police complaints boards, and in particular to what extent the Ministry of Justice was bound by them.

21. Mr. PIKIS said that he would appreciate fuller information on the conditions of detention in special cells, such as the punishment and security cells. He asked whether it was true that some detainees were able to leave their cell for only one hour each day and whether such treatment was in conformity with the Convention.

22. Referring to paragraphs 65, 69 and 73, he asked for details of the measures of restraint and the obligation for the suspect to pay the fees of the court-appointed lawyer if he was convicted. He asked whether there was a genuinely independent body to examine complaints against the police and how redress was provided for a suspect who had been placed in detention and then released. Regarding the contents of paragraphs 86-88 of the report, he would appreciate details of the jurisdiction of the District Public Prosecutor, the Director of Public Prosecutions, and the regional police complaints boards. Finally, he requested further information on the treatment of refugees (report, para. 106), on the problems referred to by Amnesty International and on further developments relating to the events at Nørrebro in 1993.

23. Mr. ZUPAÑČIČ said that he associated himself with all the questions asked by the country rapporteur and the alternate country rapporteur. He too emphasized the importance of incorporating a definition of torture into domestic legislation. Many States apparently took the view that torture could be assimilated to other offences, such as striking and wounding, without regard for the specific nature of the offence and of the various circumstances that might accompany it and for the corresponding obligations, the most important of which was the prohibition on invoking as evidence any statement obtained as a result of torture.

24. Mr. CAMARA said that he associated himself with the questions asked by the other members of the Committee. He would appreciate further clarification of paragraph 17 of the report. In addition to the fact that the compulsory placement measure was decided on the basis of a ministerial circular and not a law, which was already questionable enough, he wondered whether the fact that the measure could be used to punish repeated refusal to work was not a violation of the international conventions relating to forced labour.

25. The CHAIRMAN reiterated the considerable importance the Committee attached to the incorporation of the definition of torture into the domestic law of States parties, which was far more than a mere formality.

26. The Danish delegation withdrew.

The public part of the meeting was suspended at 11.30 a.m. and resumed at 12.05 p.m.

Third periodic report of Ukraine (CAT/C/34/Add.1): Conclusions and recommendations of the Committee

27. At the invitation of the Chairman, the members of the delegation of Ukraine resumed their places at the Committee table.

28. Mr. YAKOVLEV (Country Rapporteur) read out the following conclusions and recommendations of the Committee, in Russian:

"1. The Committee considered the third periodic report of Ukraine (CAT/C/34/Add.1) at its 283rd and 284th meetings on 29 April 1997 (CAT/C/SR....) and formulated the following conclusions and recommendations.

A. Introduction

2. The Government of Ukraine submitted its third periodic report in due time in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was ratified by Ukraine on 24 February 1987.

The Committee expresses its satisfaction with the report submitted which, in the main, conforms to the general guidelines concerning the presentation and content of such reports.

The Committee heard comments on and clarifications of the report by the representatives of Ukraine.

Following its consideration of the report and the discussion thereon, the Committee noted the following:

B. Positive aspects

3. A positive aspect of Ukraine's compliance with the Convention against Torture is the adoption, on 28 June 1996, of its Constitution, article 28 of which prohibits torture.

4. The Committee notes with satisfaction that Ukraine joined the Council of Europe on 9 November 1995 and that it has signed the European Convention on Human Rights and 11 protocols to this Convention. The Committee supports the intention of Ukraine to ratify this Convention.

5. The Committee also welcomes the incorporation in its legislation on the activities of law enforcement bodies of provisions ensuring respect by the law enforcement personnel for human rights and freedoms and on the obligation to comply with them (such as article 5 of the Act on the Militia and article 5 of the Act on the Security Service).

6. The Committee expresses the hope that the Government of Ukraine will make considerable efforts to bring its legislation and the practices of law enforcement bodies into line with the task of protecting the rights and freedoms of citizens proclaimed by the Convention.

C. Principal subjects of concern

7. The Committee is concerned by the large number of reports by non-governmental organizations of cases of torture and violence committed by officials during preliminary investigations, causing suffering, bodily injury and, in a number of cases, death.

8. The State party lacks a sufficiently effective system of independent bodies capable of successfully investigating complaints and allegations of the use of torture, preventing and putting an end to torture and ensuring that the perpetrators of such acts are held fully responsible for them.

9. The legislation in force fails to provide any effective judicial control of the lawfulness of arrests.

10. Although article 28 of Ukraine's Constitution prohibits the use of torture, its criminal legislation fails to define torture as a distinct and dangerous crime. In the circumstances, this provision of the Constitution is merely of a declaratory nature. Provisions on criminal responsibility for the imposition of inhuman and degrading punishment are also lacking.

11. The Committee is seriously concerned by the scale on which the death penalty is applied as being contrary to the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee is similarly concerned by the large number of provisions in the present Criminal Code that envisage the imposition of the death penalty (including an attempt on the life of a militiaman). This situation is contrary to the obligation assumed by Ukraine to introduce a moratorium on the imposition of the death penalty. The Committee considers that the systematic mistreatment and beating of recruits in the armed forces constitutes a flagrant violation of the Convention.

12. The conditions prevailing in premises used for holding persons in custody and in prisons may be described as inhuman and degrading, causing suffering and the impairment of health.

13. A major obstacle in efforts to prevent torture is the difficulty experienced by accused persons in gaining access to a lawyer of their choice in cases where the lawyer's participation in the proceedings depends on his presentation of an authorization to act as defence counsel; this problem can be solved only by the Ministry of Justice which issues such authorizations.

14. The Committee expresses regret at the fact that Ukraine has not as yet joined those countries which have recognized the provisions of article 20 of the Convention.

15. The Committee notes that the report contains insufficient information and, in particular, gives no statistical data on the number of persons serving custodial sentences or arrested as a preventive measure, on the number of complaints made regarding the use of torture or on the number of persons prosecuted for that offence. There is also insufficient information about conditions of pre-trial detention. No details are provided with regard to compensation for persons subjected to torture or their rehabilitation.

16. The Committee is particularly concerned at the fact that article 29 of the Constitution of Ukraine has been suspended for five years, considering that the provisions of that article of the Constitution are of great importance in ensuring the observance of the law and preventing instances of the use of torture. The Committee notes the lack of an independent body for monitoring compliance with the Convention in all its aspects.

D. Recommendations

17. The main issue to be addressed in connection with the fulfilment by Ukraine of the requirements of the Convention is that of the drafting and adoption of directly enforceable regulatory instruments, as only by this means can the provisions of the Convention (and the relevant provision of the Constitution of Ukraine) be applied in practice.

18. Priority should be given in this respect to the adoption of a new Criminal Code defining torture as a punishable offence, and of a new Code of Criminal Procedure guaranteeing in practice the right of an accused person to counsel at all stages of criminal proceedings, as well as to effective and practical supervision by the courts of preliminary confinement to preclude any use of torture at the stage of detention or arrest or at subsequent stages of criminal proceedings.

19. Another major task is to extend supervision by the judicial authorities and ordinary citizens of the work of the law enforcement agencies and to establish a system of independent institutions for rapid and effective follow-up of complaints regarding the use of torture and other degrading treatment or punishment.

20. It is highly desirable that the widest possible publicity should be given to the main provisions of the Convention through the press and other media and that practical training in the rules and standards of the Convention should be made available for investigators and the staff of penal institutions.

21. The Committee recommends that the Ukrainian authorities ensure that it is prohibited by law to interrogate any person detained or arrested without the participation of defence counsel or when the person is being held incommunicado.

22. The Committee considers the 18-month maximum period during which an accused person may be held in custody to be excessive and recommends that it should be reduced.

23. The Committee encourages the Government of Ukraine to consider withdrawing its reservation to article 20 of the Convention and to make the declarations under articles 21 and 22, and to ratify Protocol No. 6 to the European Convention on Human Rights.

24. The Committee considers that a radical reform of correctional institutions (colonies, prisons) and places of pre-trial detention is essential, to ensure full compliance with the provisions of the Convention against Torture. Solitary confinement and especially conditions of imprisonment give rise to particular concern.

25. The Committee recommends that the moratorium on the application of the death penalty should be given permanent effect.

26. It is particularly important, in the Committee's view, to organize special training for the personnel of correctional institutions, and especially doctors, in the principles and standards of the Convention.

27. The Committee believes that there is a need to establish by law a procedure for providing redress for injury caused to victims of torture (including compensation for moral injury) and to define the arrangements, amount and conditions for such compensation."

29. Mrs. PAVLIKOVSKA (Ukraine) thanked the members of the Committee for the attention they had given to her country's report. She pointed out, however, that the Committee had apparently not taken into account, in formulating some of its recommendations, the supplementary information provided orally by the Ukrainian delegation, especially on the machinery for providing redress for physical and mental injury to victims of torture. Regarding the lack of statistical information, she drew the Committee's attention to paragraphs 20, 21 and 22 of the report which indicated the number of complaints received by the Ministry of Internal Affairs concerning various kinds of irregularity, the number of officials of the Ministry of Internal Affairs convicted for offences committed in the performance of their duties and the nature of the convictions. Precise data had also been given, in the oral presentation, regarding the publicity given to the Convention and the possibility for accused persons and prisoners to consult with a lawyer. However, the observations made by the Committee would be given due consideration by the Ukrainian authorities and would undoubtedly contribute to the development of democracy in Ukraine.

30. Mr. YAKOVLEV (Country Rapporteur) said that the information provided by the Ukrainian delegation regarding compensation for victims concerned persons who had suffered as a result of errors committed during investigations rather than actual victims of torture, which was perhaps partly attributable to the fact that cases of torture were not recorded as a specific category. He added that the sole purpose of the Committee's recommendations was to assist the country to set high standards for the protection of human rights.

31. The CHAIRMAN thanked the delegation of Ukraine for its frank cooperation with the Committee.

32. The delegation of Ukraine withdrew.

The meeting rose at 12.30 p.m.